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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,867	01/26/2004	Mark A. Smith		1848
7590	03/07/2005			
Catherine Anne Whealy Proprietary Rights International P.O. Box 220 Tolar, TX 76476			EXAMINER [REDACTED]	LOCKER, HOWARD J
			ART UNIT [REDACTED]	PAPER NUMBER 1661

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JCL

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/764867	Smith
Examiner	Group Art Unit	
Howard J. Locker	1661	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

- Responsive to communication(s) filed on January 26, 2009.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

~~None~~ The claim is ~~is~~ pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

~~Claim(s)~~ The claims ~~is~~ rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

**Attachment(s)**

- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

**Office Action Summary**

1. The following is a quotation of section (a) of 37 CFR 1.163:

"(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered."

The following is a quotation of the first paragraph of 35 U.S.C. 112:

"The specification shall contain a written description of the invention, and of the manner and process of making and using it; in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor in carrying out his invention."

In plant applications filed under 36 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

"No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described."

The following is a quotation of the second paragraph of 35 U.S.C. 112:

"The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention."

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

"The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted."

The disclosure is objected to under 37 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se, and which distinguish same over related or similar known varieties and antecedents.

A. The serial number of the application directed to 'Zesty Yovictoria' should be positively set forth in the specification. Additionally, if/when such matures into a United States Plant Patent, the instant specification should be appropriately updated.

B. Conflicting disclosure is present in the specification relative to absence/presence of disc florets. Specifically, at line 7 of page 9 and at line 6 of page 10, it is stated that no disc florets have been observed. At lines 9-12 of page 11, however, it is stated that androecium are present on the disc florets only, that the anther coloration has been observed to be RHS 9A, that no pollen has been observed, and that gynoecium are present on the disc florets. Correction and/or clarification relative to this issue is necessary.

C. The color designation(s) currently set forth for the ray florets (upper surface) should be amended so as to be more meaningful and directly reflective of the ray floret coloration observed. The present recitation "9D overlain with close to 60A" does not

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appear to reasonably correspond to the plant as per the submitted illustrations. Specifically, 60A appears to be several shades darker and more purple than the ray floret coloration illustrated. Correction and/or clarification is necessary, as the color designations in the specification must reasonably correspond to the plant as illustrated (and vice versa), and both must faithfully set forth/depict the true and characteristic features of the plant.

Applicant should carefully review the instant disclosure and import into same any additional or corrected information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is being sought.

2. The claim is rejected under 35 U.S.C. 112, first and second paragraphs, as not being supported by a clear and complete botanical description of the plant, for the reasons advanced in paragraph 1 above.

3. Applicant is advised of the new mandatory procedures for amending the specification and claim under 37 CFR 1.121. Applicant may review same on the Internet at the following site:

<http://www.uspto.gov/web/offices/pac/dapp/ola/preognitice/moreinfoamprac.htm>

4. Effective May 1, 2003, the USPTO has a new Commissioner for Patents address. Correspondence in patent related matters to organizations reporting to the Commissioner for Patents must now be addressed to:

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

For further information regarding the new address, see Correspondence with the United States Patent and Trademark Office, 68 Fed. Reg. 14332 (March 25, 2003).

5. Any inquiry concerning this communication from the examiner should be directed to Examiner Howard J. Locker whose telephone number is 571-272-0980, and whose normal work hours are Monday through Thursday, from 6:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Andrew Wang, can be reached at 571-272-0811.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 1600 receptionist whose telephone number is 571-272-1600.

## **TELECOPY/FACSIMILE TRANSMISSION**

Papers related to this application may be submitted to TC 1600 by facsimile transmission. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The official fax number for TC 1600 is: 703-872-9306. The new central fax number for official correspondence is 571-273-8300.

Howard J. Locker/hjl

March 04, 2005



HOWARD J. LOCKER  
EXAMINER  
GROUP ART UNIT: 1661